

**ASSEMBLY BILL**

**No. 2617**

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**Introduced by Assembly Member Weber**

February 21, 2014

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An act to amend Sections 51.7, 52, and 52.1 of the Civil Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2617, as introduced, Weber. Civil rights: waiver of rights.

Existing civil rights provisions provide that all persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of position in a labor dispute, or sex, race, color, religion, ancestry, national origin, disability, or medical condition, or because another person perceives them to have one or more of those characteristics. Those civil rights provisions provide civil remedies for violations of their provisions.

This bill would prohibit a person from requiring a waiver of the protections afforded under those provisions as a condition of entering into a contract for the provision of goods or services, including the right to file and pursue a civil action or complaint with, or otherwise notify, the Attorney General or any other public prosecutor, or law enforcement agency, the Department of Fair Employment and Housing, or any court or other governmental entity. This bill would require any waiver of the protections afforded under those provisions to be knowing and voluntary, and in writing, and expressly not made as a condition of entering into the contract or as a condition of providing or receiving goods or services. This bill would provide that any person seeking the enforcement of a waiver of the protections afforded under those civil rights provisions

shall have the burden of proving that the waiver was knowing and voluntary and not made as a condition of the contract or of providing or receiving the goods or services. The bill's provisions would apply to contracts entered into, altered, modified, renewed, or extended on and after January 1, 2015. This bill would provide that its provisions shall not be construed to negate other specified provisions.

This bill would include legislative findings and declarations with respect to the public policy underlying its provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) The Legislature finds and declares that it is  
2     the policy of the State of California to ensure that all persons have  
3     the full benefit of the rights, penalties, remedies, forums, and  
4     procedures established by the Ralph Civil Rights Act and the Tom  
5     Bane Civil Rights Act, and that individuals shall not be deprived  
6     of those rights, penalties, remedies, forums, or procedures through  
7     the use of involuntary or coerced waivers.

8     (b) It is the purpose of this act to ensure that a contract to waive  
9     any of the rights, penalties, remedies, forums, or procedures under  
10    the Ralph Civil Rights Act or the Tom Bane Civil Rights Act,  
11    including any provision that has the effect of limiting the full  
12    application or enforcement of any right, remedy, forum, or  
13    procedure available under the Ralph Civil Rights Act or the Tom  
14    Bane Civil Rights Act, is a matter of voluntary consent, not  
15    coercion.

16    SEC. 2. Section 51.7 of the Civil Code is amended to read:

17    51.7. (a) All persons within the jurisdiction of this state have  
18    the right to be free from any violence, or intimidation by threat of  
19    violence, committed against their persons or property because of  
20    political affiliation, or on account of any characteristic listed or  
21    defined in subdivision (b) or (e) of Section 51, or position in a  
22    labor dispute, or because another person perceives them to have  
23    one or more of those characteristics. The identification in this  
24    subdivision of particular bases of discrimination is illustrative  
25    rather than restrictive.

26    (b) (1) *No person shall require another person to waive any*  
27    *legal right, penalty, remedy, forum, or procedure for a violation*

1 of this section, as a condition of entering into a contract for goods  
2 or services, including the right to file and pursue a civil action or  
3 complaint with, or otherwise notify, the Attorney General or any  
4 other public prosecutor, or law enforcement agency, the  
5 Department of Fair Employment and Housing, or any court or  
6 other governmental entity.

7 (2) No person shall refuse to enter into a contract with, or refuse  
8 to provide goods or services to, another person on the basis that  
9 the other person refuses to waive any legal right, penalty, remedy,  
10 forum, or procedure for a violation of this section, including the  
11 right to file and pursue a civil action or complaint with, or  
12 otherwise notify, the Attorney General or any other public  
13 prosecutor, or law enforcement agency, the Department of Fair  
14 Employment and Housing, or any other governmental entity.

15 (3) Any waiver of any legal right, penalty, remedy, forum, or  
16 procedure for a violation of this section, including the right to file  
17 and pursue a civil action or complaint with, or otherwise notify,  
18 the Attorney General or any other public prosecutor, or law  
19 enforcement agency, the Department of Fair Employment and  
20 Housing, or any other governmental entity shall be knowing and  
21 voluntary, and in writing, and expressly not made as a condition  
22 of entering into a contract for goods or services or as a condition  
23 of providing or receiving goods and services.

24 (4) Any waiver of any legal right, penalty, remedy, forum, or  
25 procedure for a violation of this section that is required as a  
26 condition of entering into a contract for goods or services shall  
27 be deemed involuntary, unconscionable, against public policy,  
28 and unenforceable. Nothing in this subdivision shall affect the  
29 enforceability or validity of any other provision of the contract.

30 (5) Any person who seeks to enforce a waiver of any legal right,  
31 penalty, remedy, forum, or procedure for a violation of this section  
32 shall have the burden of proving that the waiver was knowing and  
33 voluntary and not made as a condition of the contract or of  
34 providing or receiving the goods or services.

35 (6) The exercise of a person's right to refuse to waive any legal  
36 right, penalty, remedy, forum, or procedure for a violation of this  
37 section, including a rejection of a contract requiring a waiver,  
38 shall not affect any otherwise legal terms of a contract or an  
39 agreement.

1     (7) *This subdivision shall not apply to any agreement to waive*  
2 *any legal rights, penalties, remedies, forums, or procedures for a*  
3 *violation of this section after a legal claim has arisen.*

4     (8) *This subdivision shall apply to any agreement to waive any*  
5 *legal right, penalty, remedy, forum, or procedure for a violation*  
6 *of this section, including an agreement to accept private*  
7 *arbitration, entered into, altered, modified, renewed, or extended*  
8 *on or after January 1, 2015.*

9     ~~(b)~~

10    (c) This section does not apply to statements concerning  
11 positions in a labor dispute ~~which~~ *that* are made during otherwise  
12 lawful labor picketing.

13    (d) *Nothing in this section shall be construed to negate or*  
14 *otherwise abrogate the provisions of Sections 1668 and 3513.*

15    SEC. 3. Section 52 of the Civil Code is amended to read:

16    52. (a) Whoever denies, aids or incites a denial, or makes any  
17 discrimination or distinction contrary to Section 51, 51.5, or 51.6,  
18 is liable for each and every offense for the actual damages, and  
19 any amount that may be determined by a jury, or a court sitting  
20 without a jury, up to a maximum of three times the amount of  
21 actual damage but in no case less than four thousand dollars  
22 (\$4,000), and any attorney's fees that may be determined by the  
23 court in addition thereto, suffered by any person denied the rights  
24 provided in Section 51, 51.5, or 51.6.

25    (b) Whoever denies the right provided by Section 51.7 or 51.9,  
26 or aids, incites, or conspires in that denial, is liable for each and  
27 every offense for the actual damages suffered by any person denied  
28 that right and, in addition, the following:

29    (1) An amount to be determined by a jury, or a court sitting  
30 without a jury, for exemplary damages.

31    (2) A civil penalty of twenty-five thousand dollars (\$25,000)  
32 to be awarded to the person denied the right provided by Section  
33 51.7 in any action brought by the person denied the right, or by  
34 the Attorney General, a district attorney, or a city attorney. An  
35 action for that penalty brought pursuant to Section 51.7 shall be  
36 commenced within three years of the alleged practice.

37    (3) Attorney's fees as may be determined by the court.

38    (c) Whenever there is reasonable cause to believe that any person  
39 or group of persons is engaged in conduct of resistance to the full  
40 enjoyment of any of the rights described in this section, and that

1 conduct is of that nature and is intended to deny the full exercise  
2 of those rights, the Attorney General, any district attorney or city  
3 attorney, or any person aggrieved by the conduct may bring a civil  
4 action in the appropriate court by filing with it a complaint. The  
5 complaint shall contain the following:

6 (1) The signature of the officer, or, in his or her absence, the  
7 individual acting on behalf of the officer, or the signature of the  
8 person aggrieved.

9 (2) The facts pertaining to the conduct.

10 (3) A request for preventive relief, including an application for  
11 a permanent or temporary injunction, restraining order, or other  
12 order against the person or persons responsible for the conduct, as  
13 the complainant deems necessary to ensure the full enjoyment of  
14 the rights described in this section.

15 (d) Whenever an action has been commenced in any court  
16 seeking relief from the denial of equal protection of the laws under  
17 the Fourteenth Amendment to the Constitution of the United States  
18 on account of race, color, religion, sex, national origin, or disability,  
19 the Attorney General or any district attorney or city attorney for  
20 or in the name of the people of the State of California may  
21 intervene in the action upon timely application if the Attorney  
22 General or any district attorney or city attorney certifies that the  
23 case is of general public importance. In that action, the people of  
24 the State of California shall be entitled to the same relief as if it  
25 had instituted the action.

26 (e) Actions brought pursuant to this section are independent of  
27 any other actions, remedies, or procedures that may be available  
28 to an aggrieved party pursuant to any other law.

29 (f) Any person claiming to be aggrieved by an alleged unlawful  
30 practice in violation of Section 51 or 51.7 may also file a verified  
31 complaint with the Department of Fair Employment and Housing  
32 pursuant to Section 12948 of the Government Code.

33 (g) This section does not require any construction, alteration,  
34 repair, structural or otherwise, or modification of any sort  
35 whatsoever, beyond that construction, alteration, repair, or  
36 modification that is otherwise required by other provisions of law,  
37 to any new or existing establishment, facility, building,  
38 improvement, or any other structure, nor does this section augment,  
39 restrict, or alter in any way the authority of the State Architect to

1 require construction, alteration, repair, or modifications that the  
2 State Architect otherwise possesses pursuant to other laws.

3 (h) For the purposes of this section, “actual damages” means  
4 special and general damages. This subdivision is declaratory of  
5 existing law.

6 (i) *Subdivisions (b) to (f), inclusive, shall not be waived by*  
7 *contract except as provided in Section 51.7.*

8 SEC. 4. Section 52.1 of the Civil Code is amended to read:

9 52.1. (a) If a person or persons, whether or not acting under  
10 color of law, interferes by ~~threats~~, *threat*, intimidation, or coercion,  
11 or attempts to interfere by ~~threats~~, *threat*, intimidation, or coercion,  
12 with the exercise or enjoyment by any individual or individuals  
13 of rights secured by the Constitution or laws of the United States,  
14 or of the rights secured by the Constitution or laws of this state,  
15 the Attorney General, or any district attorney or city attorney may  
16 bring a civil action for injunctive and other appropriate equitable  
17 relief in the name of the people of the State of California, in order  
18 to protect the peaceable exercise or enjoyment of the right or rights  
19 secured. An action brought by the Attorney General, any district  
20 attorney, or any city attorney may also seek a civil penalty of  
21 twenty-five thousand dollars (\$25,000). If this civil penalty is  
22 requested, it shall be assessed individually against each person  
23 who is determined to have violated this section and the penalty  
24 shall be awarded to each individual whose rights under this section  
25 are determined to have been violated.

26 (b) Any individual whose exercise or enjoyment of rights  
27 secured by the Constitution or laws of the United States, or of  
28 rights secured by the Constitution or laws of this state, has been  
29 interfered with, or attempted to be interfered with, as described in  
30 subdivision (a), may institute and prosecute in his or her own name  
31 and on his or her own behalf a civil action for damages, including,  
32 but not limited to, damages under Section 52, injunctive relief,  
33 and other appropriate equitable relief to protect the peaceable  
34 exercise or enjoyment of the right or rights secured.

35 (c) An action brought pursuant to subdivision (a) or (b) may be  
36 filed either in the superior court for the county in which the conduct  
37 complained of occurred or in the superior court for the county in  
38 which a person whose conduct complained of resides or has his  
39 or her place of business. An action brought by the Attorney General  
40 pursuant to subdivision (a) also may be filed in the superior court

1 for any county wherein the Attorney General has an office, and in  
2 that case, the jurisdiction of the court shall extend throughout the  
3 state.

4 (d) If a court issues a temporary restraining order or a  
5 preliminary or permanent injunction in an action brought pursuant  
6 to subdivision (a) or (b), ordering a defendant to refrain from  
7 conduct or activities, the order issued shall include the following  
8 statement: VIOLATION OF THIS ORDER IS A CRIME  
9 PUNISHABLE UNDER SECTION 422.77 OF THE PENAL  
10 CODE.

11 (e) The court shall order the plaintiff or the attorney for the  
12 plaintiff to deliver, or the clerk of the court to mail, two copies of  
13 any order, extension, modification, or termination thereof granted  
14 pursuant to this section, by the close of the business day on which  
15 the order, extension, modification, or termination was granted, to  
16 each local law enforcement agency having jurisdiction over the  
17 residence of the plaintiff and any other locations where the court  
18 determines that acts of violence against the plaintiff are likely to  
19 occur. Those local law enforcement agencies shall be designated  
20 by the plaintiff or the attorney for the plaintiff. Each appropriate  
21 law enforcement agency receiving any order, extension, or  
22 modification of any order issued pursuant to this section shall serve  
23 forthwith one copy thereof upon the defendant. Each appropriate  
24 law enforcement agency shall provide to any law enforcement  
25 officer responding to the scene of reported violence, information  
26 as to the existence of, terms, and current status of, any order issued  
27 pursuant to this section.

28 (f) A court shall not have jurisdiction to issue an order or  
29 injunction under this section, if that order or injunction would be  
30 prohibited under Section 527.3 of the Code of Civil Procedure.

31 (g) An action brought pursuant to this section is independent of  
32 any other action, remedy, or procedure that may be available to  
33 an aggrieved individual under any other provision of law,  
34 including, but not limited to, an action, remedy, or procedure  
35 brought pursuant to Section 51.7.

36 (h) In addition to any damages, injunction, or other equitable  
37 relief awarded in an action brought pursuant to subdivision (b),  
38 the court may award the petitioner or plaintiff reasonable attorney's  
39 fees.

1 (i) A violation of an order described in subdivision (d) may be  
2 punished either by prosecution under Section 422.77 of the Penal  
3 Code, or by a proceeding for contempt brought pursuant to Title  
4 5 (commencing with Section 1209) of Part 3 of the Code of Civil  
5 Procedure. However, in any proceeding pursuant to the Code of  
6 Civil Procedure, if it is determined that the person proceeded  
7 against is guilty of the contempt charged, in addition to any other  
8 relief, a fine may be imposed not exceeding one thousand dollars  
9 (\$1,000), or the person may be ordered imprisoned in a county jail  
10 not exceeding six months, or the court may order both the  
11 imprisonment and fine.

12 (j) Speech alone is not sufficient to support an action brought  
13 pursuant to subdivision (a) or (b), except upon a showing that the  
14 speech itself threatens violence against a specific person or group  
15 of persons; and the person or group of persons against whom the  
16 threat is directed reasonably fears that, because of the speech,  
17 violence will be committed against them or their property and that  
18 the person threatening violence had the apparent ability to carry  
19 out the threat.

20 (k) No order issued in any proceeding brought pursuant to  
21 subdivision (a) or (b) shall restrict the content of any person's  
22 speech. An order restricting the time, place, or manner of any  
23 person's speech shall do so only to the extent reasonably necessary  
24 to protect the peaceable exercise or enjoyment of constitutional or  
25 statutory rights, consistent with the constitutional rights of the  
26 person sought to be enjoined.

27 (l) *The rights, penalties, remedies, forums, and procedures of*  
28 *this section shall not be waived by contract except as provided in*  
29 *Section 51.7.*